

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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PROPOSED SECRETARIAT DRAFT OF ARTICLE XVIII

A. Résumé of the Statement by the Executive Secretary at a Meeting on Wednesday, 24 November 1954

On the day when this draft first came up for examination I think it was you, Mr. Chairman, or the Indian delegate, who said that the secretariat had been extremely bold in submitting this text. This is true, and it is particularly true with regard to the section under consideration. This is in fact the most difficult and controversial question within the framework of the problem of the flexibility needed within the GATT in the case of underdeveloped countries. It is therefore desirable first that before we come to examine the terms of that part of the document, I should explain the general philosophy behind our approach.

First, the basic concept is that all the contracting parties, whether underdeveloped or not, accept the objectives of the GATT because they are in their own interest. Second, they accept the obligations because those obligations lead to the attainment of those objectives; therefore, the obligations are in the interest of all contracting parties whether underdeveloped or not. One of the reasons why underdeveloped countries accept the GATT is, I believe, that they recognize that an unwise use of restrictive measures would be against the interest of their economic development because it would result in a lowering of the standard of living which economic development aims at improving; therefore, those obligations are not regarded as something painful for those countries and reluctantly accepted by them, nor as something meant to frustrate their objectives of economic development. They are rules which - it is agreed - are in their own interests. Therefore, we have presumed that the underdeveloped countries would stick to those rules, not with a view to carrying out obligations reluctantly accepted but, among other things, because they provide a protection against the unwise claims of vested interests for excessive and harmful measures of protection. Such pressures can more easily be resisted if it can be said that those rules are international rules agreed to be in the national interest.

That being the basic philosophy there is something to be said in favour of providing for some residual flexibility for exceptional cases in which, in view of the special circumstances of those countries, they may have to deviate from the strict letter of the law. One could ask, even after accepting all that, what

if anything, is wrong with Article XVIII, because Article XVIII has been applied for years and it has not been used extensively. Why can it not meet such situations considering that it allows for the necessary flexibility subject to previous authorization?

On that I have two comments to offer. First, if Article XVIII has not been used extensively the reason is that since it has been applied there has been widespread use of quantitative restrictions for balance-of-payments reasons which has enabled these countries to enjoy the facilities needed to promote their economic development. Second, we have found that the requirement for prior authorization through an elaborate and dilatory procedure might make it difficult for those countries to defend their acceptance of obligations because the possibility of securing the necessary flexibility appears uncertain even in marginal or residual cases. We have also found that there is a feeling, at least in some countries, that it is paradoxical that whereas the GATT does not provide for previous authorization in cases of escapes for balance-of-payments purposes (which are available to all countries including the strongest and most highly developed) it does require previous authorization in the case of quantitative restrictions for economic development. We have therefore suggested that the CONTRACTING PARTIES should recognize that in general, or at least in the great majority of cases, special measures would not be necessary and that tariff protection should afford the protection necessary to new industries. In this new draft of Article XVIII there is greater flexibility as regards tariff protection for underdeveloped countries and therefore tariff protection should afford the answer in many cases. We also suggested that whatever might be decided as to the future of the balance-of-payments provisions, a substantial measure of flexibility should be provided in the Agreement for dealing with the balance-of-payments problems of underdeveloped countries. Accordingly, with these various measures of flexibility, the residual problem is indeed very small and it is for the purpose of resolving that residual problem that we have proposed Section C.

Now, as to the resort to the provisions of Section C:(1), Section C should be resorted to only for the purpose of attaining the objectives laid down in the preamble - that is, for the purpose of protecting new industries designed to raise the standards of living of the people, and (2) circumstances should be such that there would be no measure consistent with other GATT provisions which was a feasible and practicable method for achieving the objectives aimed at by the applicant country. We would then suggest that in those circumstances a contracting party should advise the CONTRACTING PARTIES of the measure that it proposes to take and it is here that our method of approach differs somewhat from the present position. We do not suggest that previous authorization should be imposed as a condition or obstacle to the country seeking to take action. We prefer to regard the approval of the CONTRACTING PARTIES as a facility or privilege which the country concerned can obtain. That is to say that this country having established its case to the satisfaction of a majority of the contracting parties could proceed with the full authorization of the CONTRACTING PARTIES and thus be protected from possible retaliatory measures by other countries. However, if the country having sought that privilege cannot convince the CONTRACTING PARTIES, if the CONTRACTING PARTIES do not grant previous authorization and if that country nevertheless takes action, other contracting parties may take equivalent measures to redress the balance.

Any action taken under Section C would be subject to annual review provided for under Section D. If in such annual reviews it appeared that any contracting party was constantly resorting to action under Section C in circumstances which the CONTRACTING PARTIES considered an abuse of those provisions, i.e., in circumstances when action consistent with the Agreement was practicable and feasible, then there might be a question whether the continuation of such a situation was in the interest of the applicant country or in the interest of the CONTRACTING PARTIES. It therefore appears to us that the risk that the residual clause would lead to systematic misuse is not serious.

B. Further Note by the Executive Secretary

In order to avoid a possible misunderstanding regarding the rationale of Section B of the proposed re-draft of Article XVIII, I have summarized below the reasoning which has led to the inclusion of that Section in the revised Article:

The initial motive which led the secretariat to suggest a transfer of the balance-of-payments provisions to Article XVIII, insofar as they are related to problems involved in economic development, was to meet the wish expressed by many underdeveloped countries to group in a single article all provisions relating to economic development. That procedure had also the advantage of re-drafting the balance-of-payment provisions to meet the specific criticisms of underdeveloped countries levelled against certain provisions of Articles XII to XIV which do not correspond to the special circumstances of their economies. Finally, this procedure would enable the CONTRACTING PARTIES to review the balance-of-payments provisions without being unduly influenced by the special problems of underdeveloped countries and to evolve rules suitable to more advanced countries.